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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			DEMICO, MATTHEW R	
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2611

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/465,529

Applicant(s)

OMÓIGUI, NOSAKHARE D.

Examiner

Matthew R Demicco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **ETAILED ACTION**

### ***Response to Amendment***

1. This action is responsive to an amendment filed 10/08/2004. Claims 1-57 are pending. Claims 1, 11, 20, 25, 34, 41, 44, 52 and 55 are amended. The Examiner thanks Applicant for pointing out reference number 510 in the specification and subsequently withdraws the prior objection to the drawing.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 11, 20, 25, 34, 41, 44, 52 and 55 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-30 and 32-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,177,931 to Alexander et al. in view of U.S. Patent No. 6,088,722 to Herz et al.

Regarding Claim 1, Alexander discloses a viewing management method for managing viewing of multiple live electronic presentations comprising an EPG (See Figure 1) enabled to use a viewer profile (Col. 29, Lines 14-21) to list programs or search

for news programs that suit a viewer's interest (Col. 31, Lines 25-52). This reads on the claimed simultaneous monitoring of two or more electronic presentations that are concurrently broadcast, that is, all the programming available in the EPG. Alexander further teaches alerting a user about a future program that may be of interest and, based on their response, automatically tuning to the program at the appropriate time (Col. 14, Lines 58-67). This reads on the claimed automatically switching between displays of the two or more electronic presentations based upon viewer-defined preferences. What Alexander does not disclose, however, is that the monitoring comprises monitoring data that does not comprise content that can be presented to a viewer.

Herz discloses a CATV system (Col. 9, Lines 64-67) for automatically selecting video programming for a customer based on a collected profile (Col. 10, Lines 5-12). Content profiles, received as data separate from the programming (Col. 42, Lines 21-26), are used to mathematically describe the contents of each video program and are compared mathematically to the viewer's profile (Col. 10, Lines 15-25). Such descriptive information may pertain to genre, directors, actors, ratings and other content (Col. 11, Line 60 – Col. 12, Line 6). An agreement matrix is subsequently calculated (Col. 21, Line 17 – Col. 22, Line 51) and the terminal controls the tuner to automatically select the most desirable programming for a customer (Col. 42, Lines 11-15). Herz therefore discloses monitoring of content profile data, which is a mathematical representation of the programming content transmitted separately and used specifically for the agreement matrix calculations. This reads on monitoring data that does not comprise content that can be presented to a viewer. Herz is evidence that one of ordinary skill in the art would

appreciate the ability to monitor content that cannot be presented to a viewer in order to automatically switch between two or more presentations based on viewer-defined preferences. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Alexander with the content profiles of Herz in order to more precisely match viewers' preferences through the use of specialized data sets that provide a high level of granularity.

Regarding Claim 2, Alexander in view of Herz disclose a method as stated above in Claim 1. Alexander further discloses a method wherein the EPG determines if a specific program may be of interest and allows a user to decide whether they wish to view that specific program or not. It is inherent that such a specific program has a presentation title. This reads on the claimed viewer defined preferences being defined in terms of specific electronic presentation titles. Further, the user profile is based on the identification of programming a user chooses to view (Col. 28, Lines 30-52). This identification of programming reads on viewer-defined preferences.

Regarding Claim 3, Alexander in view of Herz disclose a method as stated above in Claim 1. Herz further discloses viewer-defined preferences that include genres such as westerns, comedies, dramas, etc. (Col. 11, Lines 60-64). This reads on the claimed preferences being defined in terms of topics that can occur within electronic presentations.

Regarding Claim 4, Alexander in view of Herz disclose a method as stated above in Claim 1. Herz further discloses viewer-defined preferences that include attributes such as degree of sex, violence and profanity (Col. 11, Lines 65-66). This reads on the claimed

preferences being defined in terms of events that can occur within electronic presentations.

Regarding Claim 5, see Claim 2 above.

Regarding Claim 6 and 7, Alexander in view of Herz disclose a method as stated above in Claim 1. Herz further discloses that the viewer-defined preferences are defined in terms of priorities that can be assigned to two or more electronic presentations (Col. 10, Line 58 – Col. 11, Line 35, Col. 12, Lines 35-40 and Col. 13, Lines 55-58). Because these preferences relate to the contents of the programming, and the events that occur within the programming define the contents, this reads on the priorities being assigned to events that can occur within two or more electronic presentations.

Regarding Claim 8, Alexander in view of Herz disclose a method as stated above in Claim 1. Alexander further discloses a method wherein notification to a user comprises automatically changing the screen to a PIP format and displaying the notification at the same time as the real time programming (Col. 15, Lines 4-11). Alexander also discloses using the PIP window to allow the viewer to watch the current program while providing content of interest in the PIP window (Col. 31, Lines 9-24). This reads on the claimed enabling a PIP display for the viewer in which at least two of the electronic presentations are contemporaneously displayed for the viewer.

Regarding Claim 9, Alexander in view of Herz disclose a method as stated above in Claim 1. Alexander further discloses a method wherein the user's system is a computer-based system (Col. 5, Lines 20-46). It is inherent that such a computer be programmed with instructions in order to operate.

Regarding Claim 10, Alexander in view of Herz disclose a method as stated above in Claim 1. Alexander further disclose that the user system has RAM and ROM (Col. 5, Line 25). This memory reads on the claimed computer-readable media. It is inherent that such a computer be programmed with instructions in order to operate.

Regarding Claim 11, see Claim 1 above. Alexander further discloses automatically notifying a viewer when one or more of the electronic presentations satisfy a viewer-defined preference (Col. 14, Lines 58-64).

Regarding Claims 12 and 15, see Claim 2 above.

Regarding Claim 13 and 14, see Claims 3 and 4 above.

Regarding Claims 16 and 17, see Claims 6 and 7 above.

Regarding Claim 18 and 19, see Claims 8 and 9 above.

Regarding Claim 20, Alexander discloses a programmable computer having instructions (See Above) which, when executed, implement a viewing management method (See Figure 1) for managing viewing of multiple live electronic presentations (television programming). Alexander further discloses a viewer profile analysis program running at the head end (Col. 29, Lines 14-34) that collects user preference data in the form of programming consumed (Col. 29, Lines 37-55). This "Profile Program" updates data on an ongoing basis (Col. 29, Lines 22-24). This reads on the claimed sending at least one viewer request to an encoder (Profile Program), the viewer request containing one or more viewer-defined preferences (programs watched, favorite genres, etc) that relate to one or more events that can occur in one or more electronic presentations (content of the television programming). The encoder then evaluates the user's profile in

order to determine programs that are likely to suit the viewer's interest (Col. 31, Lines 25-30). This reads on the claimed evaluating, with the encoder, one or more electronic presentations that are being broadcast to determine whether any of the viewer-defined preferences are satisfied and if so, notifying a viewer (as stated above) that is associated with the preference that was satisfied. What Alexander does not disclose, however, is that the evaluating comprises monitoring data that does not comprise content that can be presented to a viewer.

Herz discloses a system as stated above in Claim 1 for monitoring of content profile data, which is a mathematical representation of the programming content transmitted separately and used specifically for the agreement matrix calculations. This reads on monitoring data that does not comprise content that can be presented to a viewer. Herz is evidence that one of ordinary skill in the art would appreciate the ability to monitor content that cannot be presented to a viewer in order to automatically switch between two or more presentations based on viewer-defined preferences. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Alexander with the content profiles of Herz in order to more precisely match viewers' preferences through the use of specialized data sets that provide a high level of granularity.

Regarding Claim 21, Alexander in view of Herz disclose a system as stated above in Claim 20 wherein the notifying comprises automatically displaying the electronic presentation as stated above in Claim 1.



Regarding Claim 22, Alexander in view of Herz disclose a system as stated above in Claim 20. Alexander further discloses that the notifying comprises displaying indicia for the viewer that is associated with the preference (Col. 14, Lines 58-64).

Regarding Claim 23, Alexander in view of Herz disclose a system as stated above in Claim 20. Alexander discloses a head end system with a Profile Program for receiving profile data and processing it. Further, it is inherent in such a television system that there be multiple different viewers and that the head end would maintain separate profiles for the different viewers. What is not disclosed, however, is receiving viewer requests with a server and sending the requests from the server to the encoder. Official Notice is hereby taken that it is well known in the art to use a server to communicate with multiple computer-based clients. It would be obvious to use a server as a "middleman" for collecting data from each user and forwarding it to the Profile Program. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Alexander with the server of the well-known prior art in order to offload the tasks of communicating with each client terminal to a separate machine independent of the "encoder" in order to free up I/O and processor resources for the analyzing of viewer profile data.

Regarding Claim 24, Alexander in view of Herz disclose a system as stated above in Claim 23. In a system such as the one stated above with a server acting as a middleman between the client and the encoder, it is inherent that any data, program recommendations for instance, would have to pass through the server in order to reach the client. This reads

on the claimed sending a notification from the encoder to the server, receiving it and sending it from the server to the viewer.

Regarding Claim 25, Alexander in view of Herz disclose a viewing management method for managing viewing of multiple live electronic presentations as stated above. Alexander further discloses a head end “encoder” operable to receive user profile information including channels/programming watched. This reads on the claimed receiving viewer requests from one or more viewers, the requests containing viewer-defined preferences that are used to evaluate a plurality of different live electronic presentations. Further disclosed is evaluating television programming based on the user profiles defined by the user’s viewer preferences as stated above and notifying a viewer if a preference is satisfied as stated above. Alexander in view of Herz disclose that evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer as stated above.

Regarding Claim 26, Alexander in view of Herz disclose a system as stated above in Claim 25, wherein the notifying comprises automatically displaying the electronic presentation that is associated with the viewer-defined preference as stated above.

Regarding Claim 27, Alexander in view of Herz disclose a system as stated above in Claim 25, wherein the notifying comprises displaying indicia of the electronic presentation that is associated with the viewer-defined preference as stated above.

Regarding Claim 28, see Claim 8 above. Alexander further discloses that one of the electronic presentations is associated with the viewer-defined preference that is satisfied (“auto surfing”, Col. 31, Lines 9-24).

Regarding Claim 29, Alexander in view of Herz disclose a system as stated above in Claim 25. Alexander further discloses a "Profile Program" running at the head end that receives the viewer requests and notifies the viewers as stated above. It is inherent that such a program must run on a computer in order to execute. This reads on the claimed server.

Regarding Claim 30, Alexander in view of Herz disclose a system as stated above in Claim 25, wherein the receiving is performed by a server that is programmed to receive the viewer requests, evaluate live electronic presentations and notify the viewers as stated above in Claim 20.

Regarding Claim 32, Alexander in view of Herz disclose a system as stated above in Claim 25 wherein the system is computer-based as stated above. It is inherent that the computers be programmed with instructions as stated above.

Regarding Claim 33, Alexander in view of Herz disclose a system as stated above in Claim 25 wherein the system is computer based and has computer-readable media with instructions thereon as stated above.

Regarding Claim 34, Alexander in view of Herz disclose a viewing management method for managing viewing of multiple live electronic presentations as stated above. Alexander further discloses the transmission of viewer profile information (viewer-defined preferences) to a head end as stated above. This reads on the claimed creation of a viewer request that contains one or more viewer-defined preferences for use in evaluating one or more live electronic presentations and sending the request to a computing device. The Profile Program in the head end evaluates the electronic

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presentations with the computing device in light of the viewer-defined preferences as stated above. Alexander in view of Herz disclose a method wherein the evaluating comprises monitoring data that does not comprise content that can be presented to a viewer as stated above.

Regarding Claim 35, Alexander in view of Herz disclose a system as stated above in Claim 34 further comprising using the computing device to send notification to a viewer in the event that one or more electronic presentations satisfies one or more of the preferences as stated above.

Regarding Claim 36, Alexander in view of Herz disclose a system as stated above in Claim 34 further comprising automatically displaying an electronic presentation for a viewer in the event that the presentation satisfies the viewer-defined preferences as stated above.

Regarding Claim 37, see Claim 2 above.

Regarding Claim 38, see Claim 4 above.

Regarding Claim 39, see Claim 4 above. Keywords could also be used to match topics that can occur in electronic presentations.

Regarding Claim 40, Alexander in view of Herz disclose a system as stated above in Claim 34 wherein the system is computer-based and has computer-readable media having computer-readable instructions thereon as stated above.

Regarding Claim 41, Alexander discloses an interactive network comprising one or more client viewing devices (Col. 3, Lines 3-25) and a head-end for receiving user profile data as stated above. This head end reads on the claimed one or more computing

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devices communicatively linked with the one or more client viewing devices. The head end simultaneously monitors one or more electronic presentations that are concurrently broadcast and automatically sends a notification to one or more of the client viewing devices when one of the electronic presentations satisfies one or more viewer-defined preference that is defined by a viewer of the one or more client viewing devices as stated above. What Alexander does not disclose, however, is that the monitoring comprises monitoring data that does not comprise content that can be presented to a viewer.

Herz discloses a system as stated above for monitoring of content profile data, which is a mathematical representation of the programming content transmitted separately and used specifically for the agreement matrix calculations. This reads on monitoring data that does not comprise content that can be presented to a viewer. Herz is evidence that one of ordinary skill in the art would appreciate the ability to monitor content that cannot be presented to a viewer in order to automatically switch between two or more presentations based on viewer-defined preferences. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Alexander with the content profiles of Herz in order to more precisely match viewers' preferences through the use of specialized data sets that provide a high level of granularity.

Regarding Claim 42, Alexander in view of Herz disclose a system as stated above in Claim 41 wherein the client viewing devices are programmed to automatically display at least an indicia of an electronic presentation that satisfied one or more preferences upon receiving notification from the computing devices as stated above.

Regarding Claim 43, Alexander in view of Herz disclose a system as stated above in Claim 42 wherein the indicia comprises a display of the live electronic presentation as stated above.

Regarding Claim 44, Alexander discloses a viewing management method for managing viewing of multiple live electronic presentations as stated above. Alexander further teaches compiling a profile of the users to determine programming they are likely to want to view and notifying the users of these events as stated above. This reads on the claimed monitoring viewing habits of one or more viewers of live electronic presentations to determine particular events within the electronic presentation that the viewers are likely to want to view and notifying one of the users when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view. What Alexander does not disclose, however, is ascertaining from data that does not comprise content that can be presented to a viewer, whether the viewers would likely want to view a particular event.

Herz discloses a system as stated above for monitoring of content profile data, which is a mathematical representation of the programming content transmitted separately and used specifically for the agreement matrix calculations to ascertain if a viewer would likely want to view a particular event. This reads on the claimed ascertaining from data that does not comprise content that can be presented to a viewer. Herz is evidence that one of ordinary skill in the art would appreciate the ability to monitor content that cannot be presented to a viewer in order to automatically switch between two or more presentations based on viewer-defined preferences. Therefore, it

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Alexander with the content profiles of Herz in order to more precisely match viewers' preferences through the use of specialized data sets that provide a high level of granularity.

Regarding Claim 45, Alexander in view of Herz disclose a system as stated above in Claim 44 wherein the notifying comprises automatically displaying the event for a viewer as stated above.

Regarding Claim 46, Alexander in view of Herz disclose a system as stated above in Claim 45 wherein the notifying comprises automatically displaying indicia of the electronic presentation, and only displaying the presentation if the user chooses to accept the change in programming as stated above. This reads on not displaying the indicia but not the electronic presentation for a viewer.

Regarding Claim 47, Alexander in view of Herz disclose a system as stated above in Claim 44 wherein the notifying comprises automatically displaying the event in a PIP window on the viewer device as stated above.

Regarding Claim 48, Alexander in view of Herz disclose a system as stated above in Claim 44. Alexander further discloses that the monitoring comprises establishing a correlation between the time that a viewer views a particular electronic presentation and the events that transpire during that time (Col. 28, Lines 30-44).

Regarding Claim 49, Alexander in view of Herz disclose a system as stated above in Claim 48. Alexander further discloses that the establishing comprises evaluating

viewer habits over a plurality of time frames during which the viewer is viewing one or more electronic presentations (Col. 29, Lines 22-30).

Regarding Claim 50, Alexander in view of Herz disclose a system as stated above in Claim 44 wherein the system is a computer-based system with instructions executed on the computer as stated above.

Regarding Claim 51, Alexander in view of Herz disclose a system as stated above in Claim 44 further comprising computer-readable media having computer-readable instructions thereon as stated above.

Regarding Claim 52, Alexander discloses an interactive network comprising one or more client viewing devices and one or more computing devices communicatively linked with the client devices as stated above. Alexander further teaches monitoring the viewing habits of one or more viewers of live electronic presentations to determine particular events within the presentations that the viewers are likely to want to view and notifying the viewers when it appears that an event is occurring within an electronic presentation that the viewer is not viewing but would likely want to view as stated above. What Alexander does not disclose, however, is ascertaining from data that does not comprise content that can be presented to a viewer, whether the viewers would likely want to view a particular event.

Herz discloses a system as stated above for monitoring of content profile data, which is a mathematical representation of the programming content transmitted separately and used specifically for the agreement matrix calculations to ascertain if a viewer would likely want to view a particular event. This reads on the claimed



ascertaining from data that does not comprise content that can be presented to a viewer.

Herz is evidence that one of ordinary skill in the art would appreciate the ability to monitor content that cannot be presented to a viewer in order to automatically switch between two or more presentations based on viewer-defined preferences. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Alexander with the content profiles of Herz in order to more precisely match viewers' preferences through the use of specialized data sets that provide a high level of granularity.

Regarding Claim 53, Alexander in view of Herz disclose a system as stated above in Claim 52. Alexander further discloses that the viewing device is a television (Col. 3, Line 25).

Regarding Claim 54, Alexander in view of Herz disclose a system as stated above in Claim 52. Alexander further discloses that the client device comprises a cable box (Col. 3, Line 25). A cable box running an EPG as shown in Figure 1 is a computer-based device as is well known in the art. This reads on the claimed viewing device comprising a computer display.

Regarding Claim 55, Alexander disclose a user interface for use in an interactive entertainment system comprising a processor as stated above and an application executing on the processor configured to present a plurality of fields, one of which displays a number of titles of programs that can be selected by a viewer (See Figure 1). Further disclosed is an input device operable to enable a user to select a particular electronic presentation for continuous play viewing (Col. 3, Line 23). What is not

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disclosed, however, is another plurality of fields displaying indicia that can be selected to define viewer preferences for simultaneously monitoring two or more programs that are selected by the viewer, wherein the monitoring comprises monitoring data that does not comprise content that can be presented to a viewer.

Herz discloses a system as stated above in Claim 1 for monitoring of content profile data, which is a mathematical representation of the programming content transmitted separately and used specifically for the agreement matrix calculations. This reads on monitoring data that does not comprise content that can be presented to a viewer. Herz further discloses that a viewer may customize their profile by specifying preferences for a plurality of characteristics (Col. 13, Lines 55-59). This reads on the claimed plurality of fields displaying indicia that can be selected to define viewer preferences for monitoring. Herz is evidence that one of ordinary skill in the art would appreciate the ability to monitor content that cannot be presented to a viewer in order to automatically switch between two or more presentations based on viewer-defined preferences. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Alexander with the content profiles of Herz in order to more precisely match viewers' preferences through the use of specialized data sets that provide a high level of granularity.

Regarding Claims 56-57, Alexander in view of Herz disclose a user interface as stated above in Claim 55, wherein the indicia is associated with characteristics of the programming such as genre, program content, etc. as stated above. This reads on the claimed predefined aspects of the programs. Since the indicia is user-selectable values,

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this reads on the claimed indicia being associated with viewer-definable aspects of the programs.

5. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al. in view of Herz et al. and further in view of U.S. Patent No. 5,561,457 to Cragun et al.

Regarding Claim 31, Alexander in view of Herz disclose a system as stated above in Claim 25. What is not disclosed, however, is receiving information describing the electronic presentations as they are being broadcast, receiving updated information as they are being broadcast, and evaluating all the information that is received in light of the viewer-defined preferences. Cragun discloses a system as stated above that continuously receives updated information regarding programming (Col. 2, Lines 58-60 and Cols. 11-12, Lines 65-14). The updated data is used to evaluate whether a user is interested in the programming. Cragun is evidence that ordinary workers in the art would recognize the benefits of continuously evaluating updated information to determine a program match. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Alexander in view of Herz with the continuously updating information of Cragun in order to locate specific segments of programming of interest to a user in a larger overall broadcast.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew R Demicco whose telephone number is (571) 272-7293. The examiner can normally be reached on Mon-Fri, 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*MRD*

mrdr

April 19, 2005

*Chris Grant*  
CHRIS GRANT  
PRIMARY EXAMINER